50th Annual Report
Covering the Licence-year Ended
February 28, 1990

Annual Report of the
Motor Carrier Commission

Pursuant to Section 34
of the Motor Carrier Act

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VANCOUVER, BRITISH COLUMBIA

To His Honour the Lieutenant Governor in Council
of the Province of British Columbia

MAY IT PLEASE YOUR HONOUR:

SIR: We respectfully transmit herewith the Fiftieth Annual Report, pursuant to the provisions of section 34 of the *Motor Carrier Act*, covering the licence-year ended February 28, 1990.

MOTOR CARRIER COMMISSION:

GERARD M. MORRIS, *Acting Chairman*

IAN W. CRAIG, *Commissioner*

WILLIAM H. PRESTON, *Commissioner*

REPORT OF THE MOTOR CARRIER COMMISSION, 1989/90

GENERAL

Section 31 (1) of the *Motor Carrier Act* provides for the appointment by the Lieutenant Governor in Council of not more than 3 persons to the Motor Carrier Commission.

The present members of the Commission are Acting Chairman, Gerard M. Morris, Commissioner Ian W. Craig, and Commissioner William H. Preston.

The Commission derives its authority from the *Motor Carrier Act,* a provincial statute, and by delegation from the Government of Canada pursuant to the *Motor Vehicle Transport Act,* a federal statute.

It is the duty of the Commission to regulate motor carriers with the object of promoting adequate and efficient service and reasonable, just charges therefor, of promoting safety on the public highways, and of fostering sound economic conditions in the transportation business in the province.

The Commission may grant or refuse applications for licence authority to transport goods or persons for compensation. Applications are first investigated by the Commission's Motor Carrier Division before being submitted to the Commission, which takes into consideration all the relevant information it has before it, including evidence of public need for the service sought to be provided before arriving at a decision. Extra-provincial freight applications are adjudicated on the basis of a reverse-onus test.

APPLICATIONS

The total number of applications filed with the Commission during the 1989/90 licence year was 3,791. Of these 898 or 23.6% were for additional vehicles, while 2,893 or 76.4% were for new authority, alterations to existing authority or transfers of authority. Generally, all applications, except for additional vehicles, require further investigation before being submitted to the Commission for a decision.

HEARINGS

A total of 71 public hearings were conducted during the licence year being reported on, including 35 at which applications for licence authority, either new or revised, were considered, 33 at which the Commission reviewed previous decisions, and 3 at which licensed carriers were given the opportunity to Show Cause why all of their licences should not be cancelled.

The majority of the hearings were scheduled for the Commission's premises in Burnaby, B.C., but hearings were also conducted in various locations throughout the province, including Abbotsford, Prince George, Smithers, Revelstoke, Williams Lake, Kamloops, Kelowna, Nanaimo and Courtenay, B.C.

Some of the more important decisions, findings, and orders of the Commission are contained in Appendix B of this report.

REVENUE

The summary of revenue for the licence year 1989/90 indicates a total of $4,447,273 which was paid into General Revenue. This amount is $889,240 more than the total generated in the previous year.

Statistics on revenue, the number of permits issued, and a comparison of the types of licences issued are presented in Appendix "A" attached hereto.

MOTOR CARRIER DIVISION ACTIVITIES

The activities of the Motor Carrier Division include participation in compliance activities through "road checks" with various other agencies, the investigation of complaints, and random audits of the records of licensed motor carriers.

The division, together with other agencies, carried out a number of "road checks" during the licence year in which approximately 3,400 vehicles, including buses and taxis, were examined for safety, proper licensing and correct documentation.

The staff of the Motor Carrier Division also prepare and provide training materials, and assist in the training of members of other enforcement agencies in motor carrier work.

SAFETY OF VEHICLES

All vehicles licensed under the *Motor Carrier Act* must satisfy strict safety requirements under the Commercial Vehicle Inspection Program and also must qualify for a National Safety Code Certificate.

TARIFF AND TIME SCHEDULES

Motor carriers licensed under the *Motor Carrier Act* are required to file rates with the Commission and to abide by the terms of the filed rates in assessing charges for the services provided. Time schedules and changes thereto must also be filed with and approved by the Commission in the case of licensed carriers operating over fixed routes on a time schedule basis.

The Commission does not regulate extra-provincial or international rates or schedules, although the authority to do so is delegated to it under the *Motor Vehicle Transport Act (1987)*.

The following table sets out the number of tariff and time schedule applications filed during the current licence year compared to previous years. (Figures indicate applications filed during the licence year ending the month of February for each year specified).

	1986	1987	1988	1989	1990
Rate	272	172	216	214	294
Time	34	28	14	25	34

APPENDIX A

SUMMARY OF TOTAL REVENUE FOR THE LICENCE YEAR 1989/90

	$
Licence Fees	3,997,289
Filing Fees	362,503
Temporary Permits	64,725
Miscellaneous	22,756
	4,447,273

REVENUE — ANNUAL COMPARISONS

The following is a comparative table of gross revenue for the last four licence years:

Kind of Licence	1986/87	1987/88	1988/89	1989/90
	$	$	$	$
Passenger (buses)	164,480	236,957	156,011	225,047
Passenger (taxis)	147,922	157,984	187,213	215,086
Public and limited freight	1,071,027	2,234,932	2,776,995	3,557,156
Permits	29,414	58,545	68,122	64,725
Miscellaneous (including filing)	22,516[1]	152,875	369,692	385,259
Totals	1,435,359	2,841,293[2]	3,558,033[3]	4,447,273[4]

[1] The reductions in miscellaneous revenue are the result of changes in accounting procedures recommended by the auditors, which more accurately identifies revenue from all sources.

[2] The increase in revenue is due in great part to revisions to the fee schedule.

[3] Filing fees, licence fees and permit fees increases reflect the fee structure in 1987.

[4] Renewal fees for licence year 1990-91 were received in January and February of 1990, which included a fee increase.

TEMPORARY PERMITS

Permits grant temporary exemption from the *Motor Carrier Act* of the necessity of obtaining a licence (operating authority) or alteration of licence, with respect to the operation of a vehicle in the manner stated therein. The holder of a temporary permit is subject to the safety provisions of the *Motor Carrier Act* and Regulations to the same extent as if he were operating a licensed vehicle. The issuance of permits is at the discretion of the Commission and allows for immediate response to be made to the requirements of trade and industry or the general public. The following is a summary of the number of temporary permits issued during the year 1989/90:

Class II permits (for temporary operations as a public or limited vehicle not exceeding 92 days)	5,038
Class III and Class IV permits (for operation of a licensed public or a limited vehicle temporarily in a manner other than is authorized by the licence, or pending consideration of an application for licence, renewal, alteration, or transfer of licence, etc.)	6,165
Special temporary permits (issued for the transportation of household goods to carriers from provinces having reciprocity agreements with the Province of British Columbia respecting commercial motor-vehicle licences)	413
Total	11,616

Permit issuance was reduced by 13% from 1988/89. The decline in the number of permits issued is mainly due to the implementation of a policy of issuing authorities within ten days from the date of the decision, and reducing the time taken to process applications to an average of forty-five days.

NUMBER OF LICENCES – ANNUAL COMPARISONS

The following table by licence years, gives the number of licences for the various classes issued:

Kind of Licence	Number of Licences, New and Renewed			
	1986/87	1987/88	1988/89	1989/90
Passenger (buses)	2,095	1,915	1,775	2,222
Passenger (taxis)	2,270	1,991	2,118	2,132
Public freight	29,013	31,140	30,892	37,081
Limited freight	3,957	3,042	2,099	1,898
Totals	37,335	38,088	36,884	43,333

APPENDIX B

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

17-89

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of Application No. 2361/88 of D. L. Clark and R. P. Lewis

Before: GERARD M. MORRIS, *Chairman*, IAN W. CRAIG, *Commissioner* and WILLIAM H. PRESTON, *Commissioner*.

Dated the 23rd Day of March, 1989

ORDER

The application of D. L. Clark and R. P. Lewis, published as No. 2361/88, for twelve new limited passenger vehicle (taxi) licenses, came before the Motor Carrier Commission in Abbotsford, B.C. on March 13, 1989 for hearing.

The applicant was represented at the hearing by Counsel, Mr. A. P. Nicol. The objectors were represented as follows: Mission Taxi (1980) Ltd, A & A Cabs (1978) Ltd., and Abbotsford Taxi Ltd. by Counsel Mr. Paul Sabatino; T. W. Caplette Trucking Ltd. d/b/a Aldergrove Taxi by Mrs. C. Bergunder and Mr. T. Caplette; and Fraser Valley Taxi Cabs Ltd. by Mr. W. O'Connor.

Mr. Nicol, in presenting the case for the applicant, first made an opening statement in which he noted the application would be operated under a partnership; suggested that because several companies were under common ownership there was no real competition in the area, which was experiencing substantial population growth; referred to the approximate 534 letters of support filed, as well as petitions signed by residents of the area; and read into the record letters of support from elected municipal officials indicating that some of them had had complaints regarding the service provided by the objectors. He indicated as well that there was support from shopping centres, drinking establishments and other businesses.

Mr. Nicol then called three witnesses, the first of whom testified that when he lost his driver's licence three years ago for a period of two years he had to rely on taxis for transportation, during which time he had experienced long delays in response and was transported in dirty vehicles driven by casually dressed drivers.

The two partners, Messrs. D. L. Clark and R. P. Lewis, were then called in turn, and in their testimony related their taxi and other business experience, and also reviewed their plans for putting the taxi service into operation if the application were to be granted. In the initial stages of the operation the applicants claimed they would use a unique dispatch system by way of cellular telephones which would permit designated cabs to act as dispatchers. During testimony the two partners indicated that they had requests for and could supply 22 direct telephone lines and further, that there was business available from several firms who would contract for their services. They expressed the view there was a large potential market in which they could develop new business and new areas of service.

It was also revealed during examination of these witnesses that they had no written business plan, although they had been able to develop a line of credit through their banker. No information was provided as to whether part of this had already been used in initial investment. Clear answers as to how 22 telephone lines could be financed or the nature and cost of the dispatch system were not forthcoming.

The objectors, in presenting their case, generally testified that they operated suitable vehicles which are kept in good shape, and the demand for taxi service has not kept pace with the population increase in the area. They related how they located cars in different areas to provide faster service and noted that they had relatively few complaints regarding the service provided.

Mr. Hansen testified for the three corporately related firms represented by Mr. Sabatino, and reviewed the list of cars dispatched, noting that all are under the preventative maintenance program and are kept in excellent condition. He described the operation of the three firms, which each have different telephone numbers, but are dispatched from one office in Abbotsford which offers them certain economies in their operation. He testified to a typical day in the business generated on one shift which showed a return of approximately $42.96 net to the driver. He indicated as well that if the application were granted, the firms he represented would be forced to curtail service by reducing the number of vehicles on call during each shift.

The spokesperson for Caplette Trucking claimed that they were struggling and that despite the population expansion, business was not increasing and the company was having a continuous battle to maintain its current operations.

Mr. O'Connor, representing Fraser Valley Cabs, pointed out that the proposed application overlapped part of the area for which he has authority and indicated that this was his principal objection. The applicant indicated that it would be prepared to eliminate that area from the territory to be served.

The Commission has carefully considered all of the relative information brought forward at the hearing, reviewed the exhibits filed, and the summations presented at the conclusion of the hearing, and makes the following Findings of Fact:

1. The support material including the letters and petitions, while not specific, appears to indicate a certain level of dissatisfaction with the service provided by the five objectors;
2. The applicant's representatives were somewhat vague in their response to financial questions, as well as some operating facets of their business;
3. The applicants were not convincing in their estimate of business that could be developed and the timeframe in which 12 cabs could be fully operational;
4. The support material submitted is sufficient to justify giving the applicants an opportunity to demonstrate the viability of their operation.

Accordingly, the Motor Carrier Commission has decided to reserve its final decision for a period of six months from the date of this Order, and in the meantime is prepared to authorize the issuance of Temporary Operating Permits to the applicants to operate four (4) cabs in the terms applied for (except Clause 1, Part 1, which will read as set out in the following paragraph) and may increase the number of permits if the need for additional vehicles can be justified by the applicant.

PART 1

Service that may be rendered:

Clause 1

Charter trips only, for business originating in that portion of the Municipality of Langley lying east of 264th Street in the Municipality of Matsqui and the District of Abbotsford, carrying a person or a group of people under charter to any point in British Columbia or to the United States of America or vice versa to the portion of the Municipality of Langley lying east of 264th Street, the Municipality of Matsqui and the District of Abbotsford.

Restriction:

All vice versa service is restricted to
(a) charge customers only; or
(b) when firm arrangements have been made beforehand.

The objectors should note and the applicants are cautioned that the Temporary Operating Permits will be issued without prejudice to the final decision of the Commission in this matter, which will be handed down in due course.

It is ordered that the operations of the said applicant be monitored by the Motor Carrier Division during the next five months, and a complete report be filed with the Motor Carrier Commission, in particular with respect to the volumes of traffic generated, the quality and standard of service provided, and the compliance with or otherwise of the requirements of the *Motor Carrier Act* and Regulations attached thereto.

It is further ordered that the applicant and the objectors who appeared at the hearing be and they are each hereby assessed costs in the amount of the security deposits filed by them beforehand.

Approved by:

GERARD M. MORRIS
Chairman

IAN W. CRAIG
Commissioner

WILLIAM H. PRESTON
Commissioner

By the Motor Carrier Commission:

JOHN KOSOWICK
Secretary to the Commission

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

20-89

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of Application No. 2191/88 of Western Bus Lines of B.C. Ltd.

Before: GERARD M. MORRIS, *Chairman*, IAN W. CRAIG, *Commissioner* and WILLIAM H. PRESTON, *Commissioner*.

Dated the 6th Day of April, 1989.

ORDER

The application of Western Bus Lines of B.C. Ltd. (the applicant), published as No. 2191/88, came before the Motor Carrier Commission in Kelowna, B.C. on March 21, 1989 for hearing. The application was to alter the Conditions of Licence of the applicant so as to authorize the provision of a scheduled public passenger (bus) service from Vernon, Kelowna and Penticton to Vancouver, B.C.; and vice versa.

The applicant was represented at the hearing by Mr. G. McOuat, who was assisted by Mr. B. Sylvester. The qualified objector, Greyhound Lines of Canada Ltd. (Greyhound) was represented by Counsel Mr. L. R. Peterson, Q.C.

In presenting the case for the applicant Mr. McOuat called three witnesses, two of them company officials, the other a Kelowna businessman. A number of printed form letters individually signed, petition forms, and other related exhibits were also filed.

Mr. B. Sylvester, manager of the applicant company, was called as the first witness and was subsequently joined at the witness stand by Mr. R. Therrien, president of the applicant company.

The proposed bus service was outlined by these witnesses including a reference to a reservation system, seat selection, light refreshments provided en route by a hostess, fax machine and cellular telephone to be on board, and blankets and pillows to be available. Schedule of the proposed service was such that a passenger could leave Vernon, Kelowna or Penticton early in the morning and arrive in Vancouver with time to do some business, visit a doctor, etc. and arrive back in the Okanagan late the same night. Disabled people, seniors, and young children would be looked after by the hostess. In addition an auxiliary express service would be provided so that fruit, vegetables, wine, or other goods could be transported for the passengers as well as for others.

No overload service was to be provided, however, nor would there be any flag stops at which passengers could be picked up en route. Once all the seats on the bus were reserved, no more passengers would be accommodated. In addition, the types of vehicles to be utilized was discussed (none of which have yet been ordered), as well as the hours to be worked by the drivers and the rates to be charged for the service, which were lower than those advertised by Greyhound for a somewhat similar service already in operation.

The third witness for the applicant, Mr. W. Boulding, a principal of Okanagan Industries Assembly Ltd. testified that he believed in free enterprise, wants a competitive service, and is in favour of deregulation of the motor carrier industry, but is generally satisfied with the present service provided by Greyhound.

Mr. Peterson, in presenting the case for the objector, called a total of four witnesses, three of them Greyhound Agents from Vernon, Kelowna and Penticton, as well as Mr. R. N. Parke, Vice-President of Traffic and Government Relations for Greyhound. Mr. Peterson also filed a number of exhibits containing statistics, maps, and other related material and data.

The three Greyhound agents testified respecting their own particular situations, their investments in the business, the services provided by them to the public, the number of people employed, and the possible consequences to them and their staff, as well as the public who faced shorter depot opening hours, less service and more waiting if the application were to be granted and ridership on Greyhound decreased further.

Mr. R. N. Parke, in his testimony, generally reviewed the operations of and the areas served by his firm and the 11 or so independent bus companies providing passenger services in B.C. He also pointed out that his company has an investment of more than thirty-eight million dollars in this province, paid over three million dollars in taxes, had a payroll of approximately thirty-eight and one half million dollars in 1988 and provides service on many runs that are not profitable. He also spoke of the principle of cross-subsidization, which provides that non-profitable passenger runs are balanced out by profitable lanes of operation such as the Okanagan as well as the express division of the company. He pointed out that if the application were granted there would likely be less service provided to the public by his company.

Mr. Parke noted that his company was also looking at a reservation system, which might cost a million dollars to institute and that his company was innovative and was experimenting with an express bus service as well as a V.I.P. service, which it is hoped would attract a number of passengers lost to competition from the airlines. He noted as well that passengers were never refused service by Greyhound and cited examples of taxis being hired to transport passengers who could not otherwise be accommodated because the bus was filled to capacity. He also expressed the view that a responsible bus operation must have suitable premises and cannot pick up passengers on street corners or at hotels as the applicant proposes to do.

In summation Mr. Peterson noted first that the onus was on the applicant to prove public need and necessity, and also demonstrate that the granting of the application would be in the public interest. In this case the applicant had failed to satisfy the normal and usual test for an application of this type.

He noted that the applicant had filed two similar applications in the past, but both had been refused by the Commission. Furthermore, one had been appealed and the decision of the Commission in that case was upheld on appeal. Circumstances had not changed since that time to any great extent and there was no particular reason to grant the application presently under consideration.

Mr. Peterson speculated as well that the hearing had purposely been set down for Kelowna in order to accommodate the applicant in the calling of witnesses, but outside of the two corporate witnesses, the applicant had called only one other, that being a businessman who testified simply that he believed in the free enterprise system with no mention of need for the service.

Mr. Peterson suggested that the applicant was merely seeking to "skim the cream" in the Okanagan on one of Greyhound's most lucrative runs. The applicant, Mr. Peterson also held out, did not have a proper place

from which to operate and was attempting to operate "on the cheap" with no facilities, no terminals, and would operate on a first come, first served reservation system with no overruns and no empty miles travelled. In closing Mr. Peterson asked that the application be refused.

In his summation Mr. McOuat agreed that the onus of proof lay with the applicant. He argued that the letters carefully set out that there was need for the proposed service, and the large number of letters ought not to be ignored by the Commission. He argued that the service provided by Greyhound was adequate, but pointed out that ridership was on the decline. He noted as well that even the applicant had seen the need for an improved service and had moved to provide an express bus service similar in nature to that now being considered by the Commission. The three further improvements to be incorporated by the applicant into the service include a daily return service, a hostess being on the bus as well as light refreshments, fax and cellular telephone, and a reservation system which is now being adopted by Greyhound.

Mr. McOuat responded to Mr. Peterson's "skim the cream" remark by noting that the applicant is an Okanagan operator, has three offices here, and it is only natural that the improved service proposed should be commenced in that area. He pointed out as well that Greyhound competes with the applicant for charter trips, but does not want competition in the scheduled passenger service.

In closing Counsel for the applicant noted that there was some criticism from the objector because of the lack of suitable terminal facilities, but it was difficult to come before the Commission complete with facilities, termin. l and equipment because of the possibility that the application might be refused. Once the application is granted it would take at least four months for new buses to be delivered and that would leave ample time for making arrangements about pick-up, etc. Finally he asked that the application be granted.

The Commission has carefully considered all of the evidence, testimony, exhibits and summations presented at the hearing, and would first express its disappointment with the case put forward by the applicant. This is the third somewhat similar application filed by this applicant, the first two having been refused, one of them being appealed and also refused on appeal. The Commission properly scheduled a hearing in Kelowna in order that the applicant would have every opportunity to present witnesses who would testify to the need of the services proposed, including examples of the benefits it would have to them and to the community. It is regrettable that the applicant did not call any such witnesses.

The Commission recognizes that there were a large number of pre-printed form letters offered in support of the application. However, the Commission is concerned that most of these letters were acquired from passengers while riding on charter trips conducted by the applicant and notes that this support is from those in an entirely different type of activity and in an atmosphere which provides for easy acquiescence to any request for support. Although such material cannot be discounted, it is in no way compelling. Furthermore, the Commission, based on the evidence given by the spokesmen for the applicant, is concerned that the applicant does not appear to have fully and carefully prepared a plan of operation to be effective if the application were granted. The Commission therefore has some reservations as to the ability of the applicant to provide the quality of service suggested at the hearing. The Commission has come to the conclusion that the granting of the application is not justified.

Accordingly, the Motor Carrier Commission orders that the application of Western Bus Lines of B.C. Ltd., published as No. 2191/88, be and it is hereby refused.

It is further ordered that the applicant and the objector be assessed costs in the amount of the security deposits filed by them beforehand.

Approved by:

GERARD M. MORRIS
Chairman

IAN W. CRAIG
Commissioner

WILLIAM H. PRESTON
Commissioner

By the Motor Carrier Commission:

JOHN KOSOWICK
Secretary to the Commission

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

21-89

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments thereto and Regulations Thereunder; and in the Matter of the *Motor Vehicle Transport Act*, S.C. 1987, Chapter 35; and in the Matter of Application No. X1187/88 of United Parcel Service Canada Ltd.

Before: GERARD M. MORRIS, *Chairman*, IAN W. CRAIG, *Commissioner*, and WILLIAM H. PRESTON, *Commissioner*.

Dated the 6th day of April, 1988.

ORDER

The application of United Parcel Service Canada Ltd. (the applicant), published as No. X1187/88, came before the Motor Carrier Commission for hearing on November 21, 1988. The hearing continued for nine days, at which time it was adjourned to January 9, 1989, and went on for a further 10 days before being concluded on January 20, 1989. Final arguments were presented on January 24, 1989.

The applicant was seeking authority through this application to provide a general freight service to any individual or company from the B.C./Alberta, B.C./U.S.A., and B.C./Yukon borders delivered to any point in B.C., or vice versa, with the following restriction:

Restriction:

No single package from one consignor to one consignee shall weigh more than 31.75 kg (70 lbs.) and each individual package shall be considered and charged for as a separate and distinct shipment.

The applicant was represented by Counsel, Mr. Tobin Robbins. He was assisted by Counsel, Mr. J. Peacock, who attended for the express purpose of cross-examining the witnesses called by Greyhound Lines of Canada Ltd. The qualified objectors were represented as follows: CP Express & Transport Ltd., the Canpar Division of CP Express & Transport Ltd., and Reimer Express Lines Ltd. by Counsel, Mr. R. W. Macdonald; Loomis Courier Service, a division of Mayne Nickless Transport Inc., Keith G. Alexander d/b/a Cormal Courier, Jackass Junction Enterprises Ltd., Kell-Starr Courier Ltd., Roken Inter-City Freight Lines Ltd., Nickoli Cartage Ltd., Allan Schamehorn d/b/a Granisle Transfer, Farwest Bus Lines Ltd. and Darlene M. Lovell d/b/a Bee Line Courier Service by Counsel, Mr. D. LaCharite; Greyhound Lines of Canada Ltd. by Counsel, Mr. L. R. Peterson, Q.C. and Counsel, Mr. G. Fulton; Gelco Express Ltd. by Mr. W. Behrenbruch; Amalgamated Transit Union by Mr. James H. Daley; Canadian Union of Postal Workers by Counsel, Mr. S. Guenther and Mr. M. Adams; and The Canadian Brotherhood of Railway, Transport and General Workers by Mr. Peter J. Askin. All-Can Express Ltd. d/b/a Ace Courier Service filed its $50 security deposit but was disqualified as an objector because of a failure on its part to comply with Regulation 4.16 (a) (ii) (mailing a statement of their objections to the applicant).

For the record, it should be noted that at the hearing Gelco Express Ltd., represented by Mr. Behrenbruch, a company official, was fully qualified as an objector. On the second day of the hearing Mr. Behrenbruch was given the opportunity to present his case. He then asked to make an opening statement, but indicated he did not wish to be sworn. Mr. Robbins, Counsel for the applicant, objected on the grounds that Gelco had filed a written objection and should be sworn if their representative intended to give oral evidence. The Commission agreed and so ruled.

The Commission subsequently advised Mr. Behrenbruch that he would be permitted to cross-examine witnesses and present argument at the conclusion of the hearing, but without giving evidence.

Throughout the hearing all of the objectors were given the opportunity to cross-examine the witnesses of the applicant, but neither Mr. Behrenbruch nor any other individual from Gelco took part in the proceedings until after the hearing was concluded and argument commenced, at which time Mr. Behrenbruch again asked if he could make a submission.

The Commission ruled, after a brief adjournment, that as the representative of Gelco had not participated in the hearing, had not called any witnesses, and did not appear to be in attendance at the hearing, he was not in a position to present argument or make a submission, and accordingly his request was refused.

Following that ruling Mr. Behrenbruch indicated that Gelco might seek legal remedies, after which he left the hearing room and did not return.

Both Mr. P. J. Askin of The Canadian Brotherhood of Railway, Transport and General Workers, and Mr. J. H. Daley of the Amalgamated Transit Union, filed written briefs at the hearing, gave sworn testimony generally expressing concern not only for the well-being of their members, but also for the public at large who might suffer if the services of other motor carriers are cut back because of competition from UPS if the application is granted, and in turn were cross-examined. Neither of them cross-examined the witnesses called on behalf of the applicant, nor did they present argument at the conclusion of the hearing.

Mr. S. Guenther, Counsel for the Canadian Union of Postal Workers, advised the Commission at the reconvening of the hearing on January 9, 1989, that he would not participate further and would not present argument at the conclusion of the hearing.

A number of preliminary and procedural matters arose, both at the commencement and during the course of the hearing, including, *inter alia*, the identification of those qualified to participate, the actual order of their participation, the status of certain witnesses, and the question of the availability of subpoenas, all of which were fully considered by the Commission in order and ruled on or disposed of accordingly.

This hearing was significant in many respects, including the large number of witnesses called and exhibits filed, the wide-ranging nature of those exhibits, the experience and qualifications of technical or expert witnesses appearing, the sincerity of "public interest" and "shipper" witnesses, as well as the intensity and extent of examination in chief and in cross.

In total the testimony of 45 witnesses was heard during the course of the hearing and 218 exhibits were filed. The Commission intends in this decision and Order to merely highlight the testimony of a number of

witnesses, rather than attempt to condense into a few lines what was said by all of the witnesses in examination, cross and redirect, during the 19 day hearing, then briefly review final argument before setting out its decision and reasons for same.

Mr. William H. Shawn, a barrister from Washington, D.C., who was active in transportation in the U.S.A., made reference during his testimony to a number of Anti-Trust actions taken in the U.S.A. against UPS of America and some associated companies. Although some of the cases had occurred 10 or 20 years ago this witness used them as part of the basis for his conclusion that for a very long period of time UPS had used a number of questionable practices, i.e. co-mingling of partial traffic and rates, repetitious filing of applications, overtly purchasing transportation companies, and predatory pricing, and by virtue of such actions obtained a virtual monopoly in the U.S.A. in the small parcel business on a nationwide basis. He suggested the applicant in these proceedings might well follow the same procedures in Canada.

Mr. Paul S. Dempsey, Professor of Law at the College of Law, University of Denver, outlined the chronological development of UPS over nearly seven decades to the point where it is one of the largest carriers in the world, with revenues in 1987 approaching ten billion dollars. He also offered an opinion as to its monopoly position, its market power, and its continued acquisition of business from the U.S. postal service. He forecast that given the licence authority sought, the door would be open to a form of competition which would destroy the smaller Canadian carrier.

Mr. R. G. Johnson, Vice-President of Corporate Development for Canpar, expressed the belief that UPS rates were predatory and volume would be lost by Canpar to UPS in the Canadian marketplace. He believed that UPS Canadian rates were lower than UPS American rates for the same distance travelled. He suggested as well that extensive UPS operations could force drastic operational changes in the service provided by Canpar.

Mr. L. A. W. Hunter, Q.C., who held senior positions with the federal government and was involved with the drafting of the new *Competition Act* of Canada, shed some light with respect to that legislation, particularly its stated purpose and the tests which are applied to determine if there is abuse by any firm or industry of its dominant position.

Mr. G. F. Reimer, Second Vice-President of Reimer Enterprises Ltd. and director of Reimer Express Lines Ltd., testified as to his company's development, its special divisions and other corporately-related companies. He noted that the Canadian trucking industry was not making large profits and reporting very small operational ratios and, furthermore, there is a horrendous downward pressure on rates, with huge discounts being offered in some cases. He suggested that the public interest appeared to favour the protection of the industry.

Mr. T. Heeney, the corporate witness for Loomis Courier Service, in his testimony, stated among other things that if the application were granted, a substantial reduction in the volumes of freight to his company would result in two main effects, those being, first, no more positive effects of expansion, investment and growth, and second, the negative effects of branch closures, service cut-backs, personnel layoffs, user pay rating and higher rates. His testimony in this regard generally followed the wording of Tab 14 of Exhibit 109 filed on behalf of his employer, which specified the rather draconian measures Loomis proposes to take if reductions in the magnitude of 5%, 10%, 15% or 20% in volume were experienced.

Messrs. J. Knight and R.M. Parke, both senior officials with Greyhound Lines of Canada Ltd., were sworn and gave their testimony together. They took the position generally that Greyhound provided a scheduled passenger service at a loss to some routes of this province, which service is subsidized to a significant extent by the revenue derived from its express package service. If the express package service suffered losses of volume because of a new entrant into the field, such as the applicant, Greyhound might, in those circumstances, be forced to reduce the passenger service it provides or eliminate it in some areas entirely.

Mr. G. Smith, who is now president of the applicant company, testified that he was the first employee of United Parcel Service in Canada. He then reviewed the history of the company operations here and spoke about the growth achieved both in volumes of business, assets, number of employees and equipment, as well as its prospects and aspirations, which include the intention to be able to provide a service to any home in Canada accessible by road. He noted that other UPS applications had been approved or were under consideration in various provinces in order to authorize such services.

Mr. Smith confirmed his position that in his view the Post Office is his main competition and, while the other objectors offer a variety of service including a rush or expedited delivery, UPS does not, and instead provides a basic service which is dependable and seldom fails.

FINAL ARGUMENTS

Mr. Peterson, in leading off argument, first pointed out that his client, Greyhound Lines of Canada Ltd., operates an extensive scheduled passenger service in the Province of B.C., and provides service to many remote and isolated areas. That service is a vital connecting link between all parts of B.C. The revenue from Greyhound's freight service acts as a cross-subsidy to the passenger service, which, while losing money, is provided nonetheless to such areas on a scheduled basis. The granting of licence authority to UPS would

result in the loss of some freight revenue, which might force the company to reduce or even eliminate entirely regular scheduled passenger services on a number of its money-losing runs.

Mr. Peterson suggested a number of findings that the Commission might wish to include in its decision and Order with respect to the application of UPS as follows:

1. The number of passengers carried by Greyhound on scheduled runs is steadily declining;
2. Evidence presented at the hearing indicates that the transportation of freight is an expanding business;
3. Revenues flowing to Greyhound from its parcel express division are required to offset the cost of providing scheduled passenger service on a number of money-losing runs;
4. The continuous operation of a full schedule of passenger services is essential to the present and future development of the province and Canada, and is thus in the public interest;
5. The granting of this application would have a serious adverse effect on the ability of Greyhound Lines of Canada Ltd. to provide and sustain a scheduled passenger service.

Mr. Macdonald, who represents Reimer Express Lines Ltd., CP Express & Transport Ltd. and one of its internal divisions, opened his final argument by noting that this was an excellent opportunity for the Commission to test the public interest. He pointed out that Mr. Smith had stated that the goal of UPS was to provide service to all points in Canada as it did in the U.S.A. He pointed out as well that FIRA had blocked the first UPS attempt to enter the Canadian market and ruled it as not being of significant benefit to this country; this had not stopped UPS, however, who began to operate in Ontario through a loophole in the law and perfected the technique now being applied in B.C. He asked the Commission not to substitute UPS policy for the public policy.

Mr. Macdonald spent some time criticizing the type of operation carried out in B.C. at the present time by UPS through the use of a prime contractor and sub-contractors, the identity of which have not been made known to the objectors. He also questioned the UPS operation from Vancouver to Victoria and denigrated the "depot" established in Victoria to distribute their freight in that area.

Mr. Macdonald stated that the objectors were very concerned that if UPS were licensed they would dominate the small package distribution business here in Canada as they had in the U.S.A. to the detriment of the local carriers and the public interest.

In closing, Mr. Macdonald asked the Commission to carefully consider the testimony of witnesses called by all of the objectors. The Commission should evaluate the advantages and disadvantages of the granting of the application. In doing so, the Commission would be almost certain to conclude that the granting of the application would be detrimental to the public interest and therefore the application should be refused.

Mr. LaCharite, who represents the Loomis Courier Service division of Mayne Nickless Transport Inc., as well as eight local licensed carriers who either compete for freight, provide interline service, or have contractual relations with Loomis and other companies, began by quoting and then giving his interpretation of selected passages from a pamphlet on the *Motor Vehicle Transport Act* (Canada), the Act itself, and the Commission's policy statement.

He then extensively reviewed the testimony of the shipper witnesses called on behalf of his clients, who generally expressed their satisfaction with the service available to them from Loomis or the other objectors represented by Mr. LaCharite, and indicated that there was no need to licence UPS.

In dealing specifically with the Loomis objection, he pointed out that his client provides transportation for dangerous goods, and has a heated van service as well as collect shipments, none of which services are available from the applicant company.

He also touched on the cross-subsidization principle and suggested that the Commission review the contents of Exhibit No. 109, particularly Tab 6, which graphically illustrates the extent of the service provided by Loomis to smaller population centres, and Tab 14, which outlines the steps that would be taken by Loomis should the application be granted and Loomis experience loss of certain volumes of freight. In this regard, he pointed out that 22 service points had been closed in Northern Ontario because of direct competition from UPS.

In closing he indicated that the smaller companies which he represents were greatly concerned that their firms may be put out of business should the application be granted, and asked that the Commission refuse it instead.

Mr. Robbins, who represents the applicant, opened his final argument by noting that the application under consideration at the present time is part of a series of applications by UPS in other provinces. The operating plan of UPS is well-established, and the president of the company, Mr. Smith, who was a witness at these proceedings, had himself spent five days driving the roads of B.C. prior to Christmas of last year to determine if the plan for service was fully operable.

Counsel for the applicant spent some time discussing the new Federal *Competition Act*, particularly the purpose of the Act (Exhibit No. 144) as testified to by Mr. L. A. W. Hunter, Q.C., who, in fact, had been instrumental in its drafting.

Mr. Robbins went on to argue that the granting of the application would benefit B.C. by giving it cost-effective access to all 48 states in the U.S.A., which is Canada's largest trading partner.

Mr. Robbins observed that Mr. G. Smith, president of the applicant company, had testified that if the application were granted, UPS would serve any address in B.C. accessible by road. This would be a service that is not provided by anyone else in B.C. at the present time. He went on to point out that Greyhound generally provides only a depot-to-depot service and does not serve some points such as Vancouver Island and the Whistler area; Canada Post, the main competition to the applicant, does not generally pick up parcels; Loomis is restricted in some cases with respect to the services it can provide off the main highways; and Canpar either does not serve some areas of B.C. or provides a rather limited service.

In reply to charges that UPS discriminates against small shippers by assessing a $4 weekly service charge, he pointed out that Canpar not only levies a service charge of $5 weekly, but also requires a minimum of $12 freight as well. UPS is therefore the friend of the small shipper who does not even pay the weekly pick-up charge if he delivers the parcel to the UPS depot.

Mr. Robbins suggested that the "tears of gloom and doom shed by the objectors are not credible" and declared that there is no hard evidence that any objectors would be hurt if this strictly extra-provincial application were granted.

In closing, Mr. Robbins indicated that the size of the applicant company itself is no reason to deny the application. He noted that 10 shipper witnesses and 142 letters of support indicating that 425 packages a day would be tendered to UPS was sufficiently strong evidence of public need, and the granting of the application was in the public interest. The application should, therefore, be granted.

The cases of the respondents generally embraced the following important aspects of their opposition to the application:

1. The claim that the parent company of the applicant had a long history in the U.S.A. of seeking monopoly power through acquisition, predatory pricing, litigation, and similar pressures; that it had been the subject of anti-trust investigation and action; and finally that it had become the largest trucking firm in the world with tremendous market power, and enjoyed a virtual monopoly in the small parcel business in the U.S.A.;
2. It was held that the Canadian subsidiary (the applicant) would, with the support of its parent, follow the same course of activity here, and would eventually by virtue of its access to substantial assets of its parent, be able to achieve the same monopolistic position in Canada;
3. Fears were expressed that the operations of scheduled LTL freight carriers would be eroded, that these operations were presently fragile, and that erosion would inevitably result in a cut-back of services or increased rates, which would be detrimental to the public interest because of the serious impact on small communities within B.C.;
4. Concerns were voiced by employees and shipper witnesses currently being served by the respondents that the granting of the authority to the applicant would disadvantage them by reducing the available service they now receive and render them less competitive or endanger their employment.

The case for the applicant drew attention to its growing investment and assets, its creation of employment and increasing employee roster. It also provided information designed to show its growth in relation to others in the same line of business, claiming that it did not appear to be affecting the growth of the objectors present.

The applicant, through exhibits, witnesses, cross-examination and argument:

1. sought to refute the allegations made about the monopolistic-like operations of its U.S. parent;
2. reviewed the 14 year history of its operations within Canada including its more recent service both within the Province of B.C. and to and from the U.S.A.;
3. outlined its operational plan for handling over-the-road traffic by establishing operation centres, central sorting hubs, package vans and feeder vehicles;
4. emphasized that its over-the-road service is not expedited, but because it is designed to compete with the post office it is most efficient and dependable.

The Commission, after thoroughly studying the exhibits, and carefully considering all of the information put forward at the hearing, both written or oral, makes the following findings of fact:

1. The small package business has been and appears still to be expanding in Canada, and this expansion appears to have affected all of the major companies offering cross-Canada service with the possible exception of bus parcel express which, by virtue of its operations and its fundamental requirements, does not appear to be able to pursue the freight business as specifically and vigorously as those companies which specialize in the parcel business;
2. Although the granting of the application may have the effect of diverting some traffic from other carriers, there is no concrete or direct evidence as to the volume of that traffic, or the effect that it may have on service, rates or employment;

3. Allegations regarding improper operations or unfair pricing policies on the part of UPS Canada were not substantiated at the hearing;
4. The granting of the licence sought may possibly result in the reduction of bus passenger service to some communities, which service is, in fact, very important to many small communities and particularly certain elements of the travelling public, e.g. the elderly, the young, or those of limited means;
5. The provision of this service is dependent to some extent on cross-subsidies by revenue from the bus parcel express service which, if reduced significantly, may possibly lead to the loss or reduction of this vital passenger service.
6. Concerns were expressed at the hearing by the suppliers of small parcel services present and by their sub-agents and/or employees, that the granting of this extra-provincial application may result in a deterioration of service, lay-offs of employees and general rate increases;
7. The granting of this application will not enable the applicant to provide a point to point over-the-road service within the confines of the boundaries of the Province of B.C.

While the applicant is large, efficient, and expansion-minded, there was no firm evidence presented that the granting of this extra-provincial application would impinge on the ability of the objectors present to continue to provide a first-rate service or that the public would be detrimentally affected.

In arriving at a determination as to whether or not the operation of an extra-provincial truck undertaking *would likely be detrimental to the public interest*, the Commission is bound by its Policy and Procedural Guidelines, in particular Section 4 (1) and (2) *to give primary emphasis to the users of the transportation service*.

Although the cases for the objectors were skillfully presented and highly persuasive, the Commission, working within the parameters of its legislative authority, could not conclude that the granting of the application under consideration would likely be detrimental to the public interest.

Accordingly, the Motor Carrier Commission orders that the application of United Parcel Service Canada Ltd., published as No. X1187/88, be and it is hereby granted.

It is further ordered that the applicant and all of the objectors named herein be and they are each assessed costs in the amount of the security deposits filed by them beforehand.

Approved by:

GERARD M. MORRIS
Chairman

IAN W. CRAIG
Commissioner

WILLIAM H. PRESTON
Commissioner

By the Motor Carrier Commission:

JOHN KOSOWICK
Secretary to the Commission

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

45-89

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of Applications of Overland Freight Lines Ltd. and Holmesland Transport Ltd., Published Respectively as Nos. 508/89 and 1092/89.

Before: GERARD M. MORRIS, *Chairman*, and WILLIAM H. PRESTON, *Commissioner*.

Dated the 8th Day of August, 1989.

ORDER

The related applications of Overland Freight Lines Ltd. and Holmesland Transport Ltd. (the applicants), published respectively as Nos. 508/89 and 1092/89, came before the Motor Carrier Commission on July 10, 1989 for hearing.

The applicants were represented by their owner Mr. C. Jensen. The two objectors, CP Express and Transport Ltd. and Van-Kam Freightways Ltd. (the objectors) were both represented by Counsel, Mr. R. W. Macdonald.

In presenting his case Mr. Jensen relied largely on some 320 letters of support previously filed with the application, and the testimony of two corporate witnesses, as well as his own evidence.

Mr. Jensen first made a very brief opening address in which he outlined his intentions with respect to the presentation of the case for the applicants. His first witness, Mr. Mason, reviewed his considerable experience

in the trucking business, outlined the scope of the two corporately-related applicants' existing Conditions of Licence, and the basic reason for the application, which was to amalgamate the operating authorities under the Holmesland name, remove an existing restriction against the practice of tacking of one particular clause, and to generally broaden the level and extent of service to be provided on the northern part of Vancouver Island, including Nanaimo. He noted that the Lower Fraser Valley, the prime service area of Overland, had been flooded with carriers in recent years, rates had been depressed and revenues had declined. For this reason the two companies felt that they had to expand their base of operations in order to remain economically viable.

Mr. M. Chidley, the second witness, generally explained how he had solicited 300 plus letters of support. During his testimony he indicated that 90% of the customers approached had agreed to sign letters of support, which had been gathered both on Northern Vancouver Island and the Mainland. He also then indicated the type of service and levels of service that might be required by a number of prospective customers.

Mr. Jensen, in his testimony, reviewed the evidence presented, which he referred to as the "three legs of the case", which he felt demonstrated the fitness and capability of the applicants, a high degree of customer support, and that there would be no adverse effect on the public interest. He also expressed the view that the granting of the applications would have a beneficial effect on the northern part of Vancouver Island and that competition has two desirable effects; it reduces rates and it results in better service being provided.

Mr. Macdonald, on behalf of the two objectors, cross-examined each witness presented, but did not call any witnesses because he felt that no case had been made and therefore there was no case to respond to. Instead he presented his final summation in which he stressed the following points:

(a) The form letters of support (being all patterned after four draft sample letters prepared by Mr. Chidley) were meaningless and contained no reference to volumes of freight shipped or frequency that service would be required;

(b) There was no evidence of lack of service, poor service, or need for additional service;

(c) There was no evidence led by the applicants with respect to the economic feasibility of the proposed expansion of service; and

(d) The applicants, who were faced with shrinking volumes of freight in the main area in which they operate, were seeking a Class III "hunting licence" in a new area.

Mr. Macdonald completed his final summation by asking that the applications be refused in their entirety.

Mr. Jensen, in his final summation, expressed the view that the applicants had clearly demonstrated that the applications should be granted. The applicants were fit, willing, and capable, there was ample support and there was no indication that there would be adverse effect on any other party. He made reference to a previous decision of the Commission, in which it indicated its primary concern in adjudicating applications was for the public. The letters of support, he felt, had been signed by responsible people, covered all areas of the applications, and represented a diverse group of shippers. Consequently, the application should be granted.

The Motor Carrier Commission, in considering carefully all of the additional evidence presented at the hearing, finds the following facts:

1. The applicant is a longstanding and responsible motor carrier in the Province of British Columbia;
2. Although no shipper witnesses appeard, a substantial number of the 312 letters of support indicate a volume of shipper support greater than that normally tendered with applications;
3. A better operating link between the two companies under common ownership is a logical business development;
4. The applicant is seeking an unscheduled service in competition with carriers providing a scheduled service in a growing but very competitive market;
5. Recently a larger freight carrier operating scheduled service in this area has gone into receivership and some claims have been made that this was due, in part, to the fragility and competitiveness of the Vancouver Island market.
6. There are conflicting views as to the nature of the market potential, growth patterns and economic factors which could generate additional freight business.

In light of the foregoing, the Commission has concluded that a decision on these applications ought to be deferred until the Commission has had an opportunity to properly examine and assess freight patterns and demand, and apprise itself of the economic conditions on Vancouver Island generally and the northern part of the Island in particular.

Accordingly the Commission orders that a decision on Application Nos. 505/89 and 1092/89 be and it is hereby deferred.

It is further ordered that the security deposits filed by the applicants and the objectors be set off against the costs of this hearing.

Approved by:

GERARD M. MORRIS
Chairman

WILLIAM H. PRESTON
Commissioner

By the Motor Carrier Commission:

JOHN KOSOWICK
Secretary to the Commission

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

48-89

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of the *Motor Vehicle Transport Act*, S.C. 1987, Chapter 35; and in the Matter of a Show Cause Hearing Pursuant to Section 9 of the *Motor Carrier Act;* and in the Matter of Public Freightways Ltd.

Before: IAN W. CRAIG, *Commissioner* and WILLIAM H. PRESTON, *Commissioner.*

Dated the 18th Day of August, 1989.

ORDER

The hearing at which Public Freightways Ltd. (the Respondent) was required to Show Cause why all of the licences issued to it should not be cancelled for non-compliance with the provisions of the *Motor Carrier Act* and Regulations, came before the Motor Carrier Commission on August 14, 1989.

Following an investigation of information which indicated that the Respondent had discontinued its services to the public on or about March 21, 1989, the Commission scheduled a Show Cause Hearing for August 14, 1989.

Mr. David Morris appeared as Counsel for the Commission. Prior to the hearing, Counsel for the Trustee in Bankruptcy, Dunwoody Limited, Mr. Paul Sabatino, advised the Commission in writing that Dunwoody Limited would not be in attendance at the hearing. A representative of Nickoli Cartage Ltd. was present and filed a statement of their position with respect to the cancellation of the respondent's licences.

At the hearing, Counsel for the Commission called Mr. Glen Wright, a Motor Carrier Inspector with the Motor Carrier Division in Burnaby, B.C., to testify. Mr. Wright informed the Commission that Public commenced service in British Columbia in 1959, and over the years built up an extensive set of Conditions of Licence. One hundred forty-four licences were renewed for 1989/90. In October, 1988, they transferred a portion of their Limited Freight authority to Utility Public Freightways Ltd.

The Respondent was placed in Bankruptcy on Sunday, March 12, 1989. No notice was given to the Motor Carrier Division as to when service was discontinued, but the Commission was reliably informed that service ceased on March 21, 1989, and an advertisement was placed in the Vancouver Sun on April 11, 1989, by the Receiver, Coopers Lybrand, offering for sale Public's motor carrier licences.

Mr. Wright informed the Commission that as the Respondent's running equipment was all leased, it was unavailable for seizure, and when he visited their premises on July 13, 1989, the yard was completely empty, and a sign posted offering the site for lease. In Mr. Wright's opinion, existing carriers have adequately handled the business formerly carried out by the Respondent.

In summing up, Counsel for the Commission stated the needs of the public appeared to have been met by other carriers, and there was no evidence of any inconvenience or delay occasioned to the public by the fact that the Respondent's licences were not being utilized.

After a short adjournment, Commissioner Craig advised the hearing that a prime facie case had been presented by Mr. Morris. Since the withdrawal of service by the Respondent, the public's needs were being adequately met by existing carriers.

The Commission then issued an Order from the Bench, which be and it is hereby confirmed THAT ALL OF THE LICENCES ISSUED TO AND IN THE NAME OF PUBLIC FREIGHTWAYS LTD. BE AND THEY ARE HEREBY CANCELLED, AND ANY RIGHTS OR PRIVILEGES CONFERRED ON THE SAID RESPONDENT BY THE LICENCES BE AND THEY ARE HEREBY CANCELLED.

Approved by:

IAN W. CRAIG
Commissioner

WILLIAM H. PRESTON
Commissioner

By the Motor Carrier Commission:

VALERIE ISAAC
Acting Secretary

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

57-89

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of a Review by the Motor Carrier Commission of its Decision Concerning the Application of Mountain Adventures Ltd., Published as No. 980/89.

Before: WILLIAM H. PRESTON, *Commissioner.*

Dated the 13th Day of September, 1989.

ORDER

The application of Mountain Adventures Ltd. (the applicant), published as No. 980/89, which had been partially granted, came before the Motor Carrier Commission in Whistler, B.C. on August 31, 1989 for review.

The application being reviewed was in two parts, the first requesting authority to provide a charter trip bus service from the Resort Municipality of Whistler to any point in B.C., which had been refused; the second requesting authority to provide sightseeing tours originating in the same area charging individual fares, which had been granted.

The applicant, who had asked for a review of the decision refusing the charter trip authority, was represented at the hearing by its president and operator, Mr. S. Perron. The objector, F. B. Ariel Alpine Adventure Tours Ltd., was represented by its president, Mr. D. Banner.

At the review hearing Mr. Perron filed two letters of support for the application, called two witnesses, one of them being Mrs. Nancy Raine, Marketing Director for the Nancy Green Lodge, the other Mr. Steve Anderson, the operator of a river rafting business. In addition, a private individual, identified as Mr. C. Rose, came forward at the hearing. He praised the wilderness tour concept offered by the applicant and indicated his support for the application.

During the course of the hearing, it became evident that the individual fare tour service previously authorized by the Commission and offered by the applicant was not completely economically viable by itself and the applicant had been engaged to some degree at least in what was essentially a charter trip operation providing service to the operator of the river rafting business.

The applicant is cautioned that if he is not fully aware of the legal definition of the term "charter trip", he should consult with the Motor Carrier Division, who will carefully instruct him in this regard.

Mrs. Raine, in her testimony, indicated the desire to open up new avenues of adventure for guests of the hotel she represents with side-trips including wilderness type tours. She noted that Whistler is becoming well known nationally and internationally and the full service hotels in the area generally support guided tours such as the applicant provides. Such tours should attract additional visitors to the area and/or make their stays more enjoyable.

Mr. Banner, in his presentation, noted that it had been a rather bad summer and the bus business had not developed as he hoped it would. He indicated that he had no objection to the individual fare operation of the applicant, but reiterated his opposition to the charter trip portion of the application largely on the grounds that there are more than enough charter operators in the area already. He agreed with the Commission's observation that Mr. Banner's firm is restricted to the operation of vehicles with a carrying capacity of not less than 25 passengers and not more than 49 passengers and thus could not provide smaller capacity vehicles such as those operated by the applicant.

The Commission, after carefully considering all of the information before it, particularly that brought forward at the review hearing, has concluded that the granting of limited charter trip authority sought was reasonably well supported, and with certain restrictions could be granted.

Accordingly, the Motor Carrier Commission orders that its previous decision in this matter of June 12, 1989, partially granting the said application be and it is hereby amended by the further granting to the said applicant of the charter trip authority applied for, but restricted to the provision of services from the Resort Municipality of Whistler to points within 150 road miles therefrom and return if arranged for on the same charter. The same vehicle size restriction attached to the individual fare authority restricting the carrying capacity of vehicles used to not less that nine (9) passengers and not more than eleven (11) passengers exclusive of the driver, shall apply.

In addition, a further restriction shall apply to the charter trip clause granted herein preventing its sale or transfer without the direct prior consent of the Commission.

Finally, the applicant is cautioned that licence authorities not being exercised for some time are considered to be dormant and should, by application, be deleted from the applicant's Conditions of Licence, but if not may be deleted by the Commission pursuant to Section 9 of the *Motor Carrier Act*.

In all other respects the previous decision of the Commission in this matter be and it is hereby confirmed.

Approved by:
WILLIAM H. PRESTON
Commissioner

By the Motor Carrier Commission:
JOHN KOSOWICK
Secretary to the Commission

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

66-89

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of Application No. X557/89 of Indiana Jones Inc.

Before: GERARD M. MORRIS, *Chairman*,

Dated the 18th Day of October, 1989.

ORDER

The application of Indiana Jones Inc., published as No. X557/89, came before the Motor Carrier Commission in Burnaby, B.C. on October 11, 1989 for hearing.

After considering what was said by the applicant and noting that there were no objectors and none represented at the hearing, the hearing was concluded.

It is ordered that the application of Indiana Jones Inc., published as No. X557/89, be and it is hereby granted, as formally amended beforehand by Counsel for the applicant in correspondence dated March 23, 1989, by adding thereto a restriction excluding the transportation of new or used cars and trucks.

It is further ordered that the security deposit filed by the applicant beforehand is set off against the costs of the hearing hereby assessed.

Approved by:
GERARD M. MORRIS
Chairman

By the Motor Carrier Commission:
JOHN KOSOWICK
Secretary to the Commission

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

69-89

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of the *Motor Vehicle Transport Act*, S.C. 1987, Chapter 35; and in the Matter of a Show Cause Hearing Pursuant to Section 9 of the *Motor Carrier Act;* and in the Matter of Flagship Moving & Storage Ltd.

Before: GERARD M. MORRIS, *Chairman* and WILLIAM H. PRESTON, *Commissioner.*

Dated the 23rd Day of October, 1989.

ORDER

The hearing at which Flagship Moving & Storage Ltd. (the respondent) was to be given the opportunity to SHOW CAUSE why all of the licenses issued to it by the Motor Carrier Commission should not be cancelled, because it was alleged that the said respondent was

(a) not now exercising the rights and privileges granted in the licence, and

(b) is not now providing an adequate and efficient service,

took place in Burnaby, B.C. on October 19, 1989.

The respondent did not appear and was not represented at the hearing.

The Commission noted that the respondent had been properly notified by registered mail of the time, date, and place of the hearing in accordance with the requirements of Section 43 (2) of the *Motor Carrier Act*.

Mr. D. Murray, Manager, Freight Licensing Provincial Region for the Commission's Motor Carrier Division, testified that the respondent had not provided a service since early in August of 1989 and perhaps even before that date. He also noted that there is an extensive list of unsatisfied creditors, including the Workers' Compensation Board and Revenue Canada. In addition two of the trucks operated by the respondent company have been seized for non-payment of debts and the Motor Carrier Licence Plates therefrom returned to the Division.

Mr. Murray also testified that there were a number of complaints regarding over-charges, damages and other related problems which had not been addressed by the respondent, although requested to do so by the Commission. He noted that the records disclosed that the respondent had previously filed an application for additional licence authority, which had been refused by the Commission partly on the basis of unpaid bills, particularly to the Workers' Compensation Board.

Mr. D. K. Doane, the investigating officer in this case, generally corroborated the testimony of Mr. Murray and provided additional information respecting the respondent's move to new premises, and on his attendance there he found them to be occupied by another moving company. He also testified that according to his records no service had been provided by the respondent since July of 1989, and he indicated that the four phone numbers listed by the respondent company had been checked and were not in service as of yesterday's date.

At the conclusion of the hearing the Commission indicated that it was satisfied that the respondent is not exercising the rights and privileges granted in the license and is not providing an adequate and efficient service. Accordingly, sufficient cause has been demonstrated to support the cancellation of the licenses under consideration.

It is ordered therefore by the Motor Carrier Commission that all of the Motor Carrier Licenses issued to and in the name of Flagship Moving & Storage Ltd., be and they are hereby cancelled, and any rights or privileges extended to the respondent by the granting of the licenses, be and they are hereby extinguished.

Approved by:

GERARD M. MORRIS
Chairman

WILLIAM H. PRESTON
Commissioner

By the Motor Carrier Commission:

JOHN KOSOWICK
Secretary to the Commission

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

73-89

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of Sea Island Freight Ltd. and Landmark Transport Inc.

Before: GERARD M. MORRIS, *Chairman*, IAN W. CRAIG, *Commissioner* and WILLIAM H. PRESTON, *Commissioner*.

Dated the 27th Day of October, 1989.

ORDER

Whereas the Motor Carrier Division commenced an investigation into the transportation services provided by Sea Island Freight Ltd., who it was alleged were operating without the benefit of motor carrier licence authority; and

Whereas it was determined that Sea Island Freight Ltd. for over a period of one year had operated under "leased" or "rented" motor carrier plates issued to and in the name of Landmark Transport Inc; and

Whereas Section 3 and sub-section 3 (a) of the *Motor Carrier Act* stipulates that "except as exempted under this Act no person shall operate on a highway, a motor vehicle as a public vehicle or a limited vehicle unless he or the person for whom or on whose behalf the motor vehicle is operated holds a licence"; and

Whereas Section 7 of the *Motor Carrier Act* stipulates that "no licence shall be assigned or transferred except with the approval of the commission, and subject to payment of the prescribed fee and to conditions the commission imposes"; and

Whereas Sea Island Freight Ltd. does not hold a motor carrier licence, but instead was illegally using plates issued to and in the name of Landmark Transport Inc.; and

Whereas the license plates "rented" or "leased" to Sea Island Freight Ltd. by Landmark Transport Inc. were seized by inspectors of the Motor Carrier Division and remain in their custody; and

Whereas both Sea Island Freight Ltd. and Landmark Transport Inc. are in contravention of the *Motor Carrier Act;*

Accordingly the Motor Carrier Commission orders that Sea Island Freight Ltd. cease and desist from providing any transportation services for which it does not hold licence authority;

It is further ordered that Landmark Transport Inc. CEASE AND DESIST from the illegal practice of "renting" or "leasing" its licence plates and confine its activities to providing the transportation services it is authorized by its licences to provide.

It is further ordered that the 11 motor carrier licence certificates issued to and in the name of Landmark Transport Inc. be and they are hereby suspended for an indefinite period of time, and the said carrier is limited to the use of the five current motor carrier licence certificates presently being legitimately utilized.

Approved by:

GERARD M. MORRIS
Chairman

IAN W. CRAIG
Commissioner

WILLIAM H. PRESTON
Commissioner

By the Motor Carrier Commission:

JOHN KOSOWICK
Secretary to the Commission

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

74-89

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of Application No. 725/89 of Great Pacific Carriers Inc.

Before: GERARD M. MORRIS, *Chairman* and IAN W. CRAIG, *Commissioner.*

Dated the 2nd Day of November, 1989.

ORDER

The application of Great Pacific Carriers Inc. (the applicant), published as No. 725/89, came before the Motor Carrier Commission in Kamloops, B.C. on October 3, 1989, for public hearing.

The application was for two new limited passenger vehicle licences authorizing the provision of a charter trip bus service for and on behalf of Valley Stage Lines Inc. d/b/a Blue Chip Tours, transporting passengers originating at points in Licence District No. 7 south of, but including Clearwater to any other point in B.C. or to the B.C./Alberta and the B.C./U.S. Border or vice versa.

The applicant was represented by Counsel, Mr. A. Basile. The two qualified objectors were represented as follows: All Points Bus Charters Ltd. by Mr. Larry Gray, a company official, and Greyhound Lines of Canada Ltd. by Counsel, Mr. S. Dev Dley. Canada West Coach Lines Ltd. and Western Bus Lines of B.C. Ltd. were both ruled out as qualified objectors on technical grounds.

Mr. Basile made a brief opening statement and then in presenting his case called 10 witnesses. With the exception of the principal of the applicant company, the witnesses included several persons who, from time to time, arrange travel for various school teams and other events. All of these witnesses expressed themselves as well pleased with the service provided. A number of other witnesses complimented Mr. David Brown, the president and general manager of the applicant company, for services rendered to the Canada Games Committee, particularly in providing free transportation to the Site Selection Committee as well as for his apparent interest in community affairs and activities. They also commented favourably on the introduction of city tours and special events tours.

Mr. Brown reviewed his experience in the bus business when employed by other companies. He expressed his enthusiasm for the City of Kamloops and its future and his interest in serving the community. He referred to his participation in the Canada Games application activities, the institution of a hustle-bus service on a seasonal basis, regular city tours and special event tours to entertainment activities and to resorts such as Reno and Las Vegas. He expressed some pride in the fact that his employees had taken "Super Host Training Courses" and dressed in attractive uniforms.

Mr. Dley, who presented the case for Greyhound, whose case was generally supported by the other objector, called a total of six witnesses and filed a number of exhibits, 14 of them having to do with Mr. Brown's fitness based on his past financial and credit records. Questions as to Mr. Brown's financial fitness were also raised by several witnesses who testified as to debts owed to their firms by Mr. Brown and/or his companies. One witness indicated that although contracting to provide bus service to a rock concert in Kelowna, Mr. Brown was unable to provide the transportation and service had to be supplied by Greyhound Lines of Canada Ltd. The president of Wells Gray Tours Ltd. described the tours operated by his firm and the charter services available.

The regional manager for Greyhound outlined Greyhound's services, which include a daily scheduled service throughout the Province and a complete charter service. He noted that substantial investment had been made in a new bus depot in Kamloops, as well as in a maintenance facility, and that a number of new coaches had been ordered of top quality equipped with video and other facilities. He indicated that Greyhound itself was a good corporate citizen and over the years had supported many activities in the interest of the community and groups within the community. He also stressed the fact that Greyhound employees are trained in customer service techniques.

In closing Mr. Dley argued that there was no evidence of a lack of charter service in the Kamloops area, and the witnesses called by the applicant were generally those whom he met through his involvement with Canada Games. Mr. Dley questioned the fitness of Mr. Brown and reviewed the testimony presented and the exhibits filed with respect to Mr. Brown's credit experience.

Mr. Basile, in his final argument, said no evidence of illegal activities on the part of his client had been raised, that the evidence showed that his client was innovative and had served the community by arranging city tours, the hustle-bus service and special events trips of various kinds. He suggested that his client should be complimented and not criticised and that in his view the question of fitness should not have been raised by the principal objector to the application. He closed by saying that the application was merely a very simple contract application and should be granted as applied for.

The Commission, after carefully reviewing all the information and documents provided to it prior to, during the course of, and subsequent to the hearing, finds the following facts:

1. The contract between Valley Stage Lines Inc. d/b/a Blue ChipTours, and Great Pacific Carriers Inc. is an arrangement of convenience and the principal shareholder and dominant figure in both enterprises is Mr. David Brown;
2. Mr. Brown was not completely frank and to some extent evasive in responding to some of the questions put to him during the hearing (the Commission appreciates the apology tendered by Mr. Basile in one instance on behalf of his client);
3. Documentary evidence was filed that raised serious unanswered questions regarding the applicant's financial responsibilities and record;
4. Evidence was also presented to the Commission regarding the seizure of certain vehicles purchased by the applicant for failure to make payment, the seizure procedure occuring while the hearing was actually in progress.

The Commission notes that subsequent to the conclusion of the hearing, the applicant in these proceedings requested a temporary operating permit which was granted, but was not picked up. The vehicle, it is understood, made the trip without having the permit aboard, which is contrary to Regulation 10.05 of the *Motor Carrier Act*.

In addition, a request for another permit was made and this time the permit was refused, but the vehicle departed for Reno without licence authority, which is contrary to Section 3 (a) of the *Motor Carrier Act*. The vehicle was ticketed in this instance.

Furthermore, it is understood that a bus load of passengers was transported to the Rolling Stones concert in Vancouver, B.C., on November 1, 1989, by the applicant without benefit of licence authority or permits, which were refused. Again in this case a ticket was issued.

Finally, it was reliably reported to the Commission that a number of passengers who purchased tickets from Valley Stage Lines Inc. for transportation by bus to a hockey game in Vancouver were left waiting for the bus, the trip being cancelled without explanation or notice to the passengers.

It is the carefully considered conclusion of the Commission first, that serious questions were raised regarding the credibility, financial integrity and judgement of the principal of the applicant company; second, that insufficient evidence was presented of genuine public need; and finally, that it would not be in the public interest to grant the application.

Accordingly, the Motor Carrier Commission orders that the application of Great Pacific Carriers Inc., published as No. 725/89, be and it is hereby refused.

It is further ordered that the applicant and the objectors who participated in the hearing be and they are hereby each assessed costs in the amount of the security deposits filed beforehand by them. The security deposits filed by Canada West Coachlines Ltd. and Western Bus Lines Ltd. who failed to qualify on technical grounds, are to be refunded.

Approved by:
GERARD M. MORRIS
Chairman
IAN W. CRAIG
Commissioner

By the Motor Carrier Commission:
JOHN KOSOWICK
Secretary to the Commission

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

80-89

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of Application No. 1159/89 of Receiver Transport Ltd.

Before: GERARD M. MORRIS, *Chairman*, IAN W. CRAIG, *Commissioner* and WILLIAM H. PRESTON, *Commissioner*.

Dated the 10th Day of November, 1989.

ORDER

The application of Receiver Transport Ltd. (the applicant), published as No. 1159/89, came before the Motor Carrier Commission in Revelstoke, B.C., on October 5, 1989, for public hearing.

The application reads:

Alteration of all Class III Public Freight-vehicle Certificates by adding thereto the following new clause:

Commodity:	*Shipper:*	*Area to be Serviced:*
Logs (charter trips)	Westar Timber Ltd.	(a) Between points in Licence District 6, that portion of Licence District 2 north of and including Fauquier, and from this area delivered to Donald and Golden, or vice versa; (b) From points in Licence District 6 and that portion of Licence District 2 north of and including Fauquier, delivered to points in Licence Districts 14, 15, Merritt and Cache Creek.

The applicant was represented at the hearing by its president, Mr. Lionel C. Watson. The 140 qualified objectors, among them Teamsters Local Union No. 213, various individuals and companies licensed under the *Motor Carrier Act* and lease operators who provide transportation service to licensed haulers, were represented by Counsel, Mr. Barry Dong.

Mr. Watson called no witnesses, not even a representative of the shipper, Westar Timber Ltd., but testified himself, entered several exhibits, cross-examined the witnesses called by Mr. Dong and presented a summary at the conclusion of the hearing.

In presenting the case for the applicant, Mr. Watson appeared to rely heavily on the fact that his firm, which has extensive motor carrier licence authority, both extra and intra, was willing and able to provide the service applied for, was a fit carrier, and had a signed contract to haul logs for one named shipper, Westar Timber Ltd. (Westar).

Under cross-examination Mr. Watson revealed that he operated three trucking firms licensed under the *Motor Carrier Act* and in addition had other extensive business interests, including sawmills, a logging operation, and a firm which builds and/or repairs trailers.

He noted that he had been invited to submit a bid for the required work to Westar in March of 1989 and subsequently had been informed that his was the successful bid. He divulged as well that he had undertaken to purchase 17 new tractors to carry out the contract with Westar.

During cross-examination, questions were put to Mr. Watson regarding the financial arrangements contained in the contract with Westar, which was not filed as an exhibit, and after he availed himself of

independent legal advice it was revealed that his firm was to be paid $2.13 per tonne hour for all classes of vehicles. Lease operators or trucking firms who provided a service under this contract to the applicant would in turn be paid $2.03 or $2.06 per tonne hour, depending on vehicle configuration.

Mr. Dong, on behalf of the objectors, called seven witnesses, filed a number of exhibits, cross-examined Mr. Watson extensively and also presented summation at the conclusion of the hearing.

Six of the seven witnesses called by Mr. Dong generally voiced the concerns of truck loggers in the Revelstoke area that they would have extreme difficulty in obtaining work, as the applicant would give preference to its own drivers and operate its own vehicles. One witness objected to the low rates being paid and under cross-examination indicated that he would not be prepared to work for Westar at the present rates being paid.

Another witness, Mr. S. G. McKenzie, testified at length. In that testimony he outlined his failure to come to a satisfactory arrangement with Westar which would justify him turning to mechanical logging. He also related a drastic decrease in the amount of work tendered by Westar when it resumed operating after a one month closure.

He referred to rate discussions and unilateral reductions of rates by Westar. He also expressed concern that nearly all the major local contractors had been terminated, and stated his belief that he himself had been black-balled by Westar.

Mr. R. A. Lenzi, during testimony, discussed the disparity in rates being paid in Revelstoke and Nakusp, Golden and other areas. He also expressed his concern over the near monopolistic position enjoyed by Westar, the disruption which this application, if granted, would cause in the community and his fear that many small businesses in the logging contracting field, small log hauling enterprises and low-bed operators would be adversely affected.

Mr. A. Scott, a logging contractor for over 25 years in this area, testified regarding his experience with Westar who, in 1987, pressed him to turn to mechanical logging. Westar took him to the United States where a machine which was thought to be suitable was looked at. Subsequently he bought the machine at a cost of $700,000 but despite 16 months of effort it proved to be unsuitable and was sold for $500,000. In November of 1988 Westar shut everything down for a period of time and asked him, without consultation, to operate at a reduced rate, after which they implemented new quality control standards, including a penalty and bonus system which, in his opinion, was heavily weighted in Westar's favour. Finally, after three months of trying to negotiate a suitable contract rate with Westar, he received a letter of termination on the grounds that he was not providing service.

In presenting summation, Mr. Dong first noted that it was a most unique hearing in many ways and was an important case to those directly concerned and to the area as a whole. He questioned the support material filed by the applicant, suggesting that it included three innocuous letters, which in fact were not really supportive, one from the City of Revelstoke, one from the Economic Development Commission and the other from the Chamber of Commerce. He also drew attention to the absence from the hearing of the shipper, Westar.

Mr. Dong suggested that there were reasons why the applicant did not wish to disclose to the objectors the terms of the four year term contract entered into between the applicant and Westar. This contract, he said, if the application is granted, would actually create a hauling monopoly over 80% of the timber logged in the area.

He noted that seven credible witnesses who live in Revelstoke and earn their living there testified from the heart. They represented both small and large trucking companies, but they were all saying the same thing. The applicant dwarfs McKenzie Trucking Ltd., the largest of the objectors, and if the application is granted, all objectors, large or small, must pay a premium to the applicant for working.

Mr. Dong stated that this is not a simple licence application, Westar is a silent partner, and should be here to testify. They know fully the impact of what they are doing. It is a slap in the face to the community and the Commission for Westar not to be present. He urged the Commission to find that the application is not based on need and necessity as referred to in the Act.

In closing, Mr. Dong predicted that if the application were granted, the method under which the system of log haulers has operated for many years will be changed completely. He referred to the applicant as an octopus with many varied interests and in reference to Mr. R. C. J. Fahlman's testimony questioned whether Receiver would move in on the Nakusp area. He asked that the application, which has so little to recommend it, be refused.

Mr. Watson, in his final summation, suggested that there is a lack of licensed carriers in the area and noted the number of permits that had been granted. Many truckers from other areas had been brought into Revelstoke under permits so that service could be provided to Westar.

His firm, Mr. Watson stated, had bid for the contract and had been successful. Westar's past performance in the area had been cited at this hearing, but that is not the same as the present situation. His firm has committed itself to the investment of up to three million dollars in the project by way of new equipment to provide this much needed service to the largest employer in the Revelstoke area.

In closing he suggested that the granting of the application would actually stabilize the situation in Revelstoke and the application ought therefore to be granted.

Section 5 (2) of the *Motor Carrier Act* (the Act) enumerates those matters that the Commission may take into consideration in arriving at a decision to grant a licence in whole or in part or refuse a licence. The matters include objections by persons already providing transportation services, the general effect on other transportation services and any public interest which may be effected by the issuance of the licence. Also included are the quality and permanence of the service to be offered by the applicant, and the fitness, willingness, and the ability of the applicant to provide proper service.

There can be no doubt that the applicant, whose principal operates three separate trucking firms with motor carrier licences, meets and perhaps exceeds these very essential requirements. No questions have been raised as to the quality and permanence of the service provided by the applicant or to the applicant's fitness, willingness, and ability.

The objectors, through their Counsel and their testimony, have expressed their concerns about the effect the granting of the application would have on other transportation services. They have gone so far as to suggest that the granting of the application would result in a profound and drastic change in the manner in which truck logging is carried out in the Revelstoke area, change which they say would leave them, with their heavy investment in equipment, out of work.

However, the applicant argues that this is not the case and claims that numerous Temporary Operating Permits have been issued because service was not available from local truckers, and the granting of the application would serve to "stabilize" the industry. The applicant goes further and states that the application is a simple one involving a cont[illegible] between a shipper (Westar) and a carrier (the applicant) for a four year term.

In this particular case, however, 140 qualified objectors are on record as opposing the application under consideration. Through their Counsel they have enunciated their concerns with the application and the fear that its granting would totally and irrevocably change the traditional practices with respect to log hauling.

The Commission is concerned that the shipper, Westar Timber Ltd., did not participate in these proceedings. Whether the absence of Westar was the choice of the applicant or that of Westar itself the Commission does not know. However, the Commission points out that it was denied the opportunity of receiving economic background in respect of Westar's logging operations, explanations or refutations of claims made by objectors, explanations as to why a company controlling possibly 80% of the timber supply finds it necessary and expedient to employ different methods of truck and harvesting arrangements within its area of operations, or why in certain of its operations it appears to deal directly with log haulers and truck owners at a rate comparable to that paid to Receiver but higher than that which will be paid by Receiver to operators in the territory under discussion in this application. The very fact of Westar's absence ultimately weakened the case for the applicant.

After carefully considering all of the material before it, all of the documentation provided to it and the testimony and argument presented at the hearing, the Commission must make reference to the responsibilities placed on it by the *Motor Carrier Act*, particularly Section 36 (1) which reads:

> It is the duty of the commission to regulate motor carriers with the objects of promoting adequate and efficient service and reasonable and just charges for it, and of promoting safety on the public highways, and of *fostering sound economic conditions in the transportation business in the Province*, and the commission may make investigations, inquiries, regulations and orders it thinks necessary for the carrying out of those objects;

and Section 5 (2) (a, b, c) which reads:

> On an application for a licence, the commission may take into consideration, among other matters,
>
> (a) any objection to the application for the licence made by any person already providing transport facilities, whether by highway, water, air or rail, on the routes or between the places which the applicant intends to serve on the ground that suitable facilities are or if the licence were issued, would be in excess of requirements, or on the ground that any of the conditions of any other licence held by the applicant have not been complied with;
>
> (b) the general effect on other transport services and any public interest which may be affected by the issue of the licence;
>
> (c) the quality and permanence of the service to be offered by the applicant, and the fitness, willingness and ability of the applicant to provide proper service.

In respect to Section 5 (2) (c) there can be no doubt that the applicant would meet the implicit requirements of the Act. However, the nature of the hearing has brought Section 5 (2) (a) and (b) into sharp focus and, in fact, has made it pivotal to the Commission's decision.

No compelling evidence was adduced before the Commission to establish that in the past suitable facilities and services did not exist. The fact is that the granting of this application could have a very significant effect upon a substantial number of log haulers with limited licence authority who would be

supplanted by a general freight carrier having not only operating flexibility but a major economic advantage of size, together with such flexibility.

In the main, log haulers are small independent businessmen who must usually seek their living within a limited geographic area and in a limited form of operation. The granting of the application of Receiver Transport Ltd. obviously would place the future of these small business people in jeopardy and in light of the region and the number of people involved, the granting of the application would indeed be detrimental to the public interest.

Therefore, the Commission has concluded that the application ought to be refused.

Accordingly, the Motor Carrier Commission orders that the application of Receiver Transport Ltd., published as No. 1159/89, be and it is hereby refused.

The Commission further orders that the security deposits filed by the applicant and the qualified objectors be set off against the cost of this hearing.

Approved by:

GERARD M. MORRIS
Chairman
IAN W. CRAIG
Commissioner
WILLIAM H. PRESTON
Commissioner

By the Motor Carrier Commission:

JOHN KOSOWICK
Secretary to the Commission

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

86-89

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of the Application of Clark Reefer Lines Ltd., published as No. 1827/89.

Before: GERARD M. MORRIS, *Chairman*, IAN W. CRAIG, *Commissioner* and WILLIAM H. PRESTON, *Commissioner*.

Dated the 11th Day of December, 1989.

ORDER

The application of Clark Reefer L[illegible]s Ltd. (the applicant), published as No. 1827/89, came before the Motor Carrier Commission on November 22, 1989, for public hearing.

The applicant was represented by Counsel, Mr. T. Robbins, who was assisted by Counsel, Mr. C. Weafer. The qualified objectors were represented as follows: Van-Kam Freightways Ltd. and Valley Reefer Services Ltd. by Counsel, Mr. R. W. Macdonald; Sidney Freight Ltd. by Mr. B. Marshall; and C.P. Express and Transport Ltd. by Mr. B. Smith.

Island Reefer Services Ltd. was ruled out as a qualified objector for technical reasons. Glacier Transport Ltd. was also challenged on the same grounds by the applicant, but was not in attendance and was not represented, therefore did not participate in the hearing.

Mr. Robbins, in presenting the case for the applicant, called a total of 13 witnesses, filed a number of exhibits, including additional support material, cross-examined the witnesses called by the objectors and presented argument at the conclusion of the hearing.

Following his brief opening address, in which he noted the 100% B.C. owned applicant company was founded in 1957 by Mr. J. Clark (the principal shareholder and president), Mr. Robbins informed those present that the applicant specializes in the transportation of temperature controlled freight. He said food and pharmaceuticals contribute 85% of its business volume and general commodities make up the 15% balance.

He noted as well that Vancouver Island is the only large populated area of B.C. not presently served by the applicant. He indicated that the applicant, which provides a Saturday delivery service at no extra cost, has received many requests to provide service to both Victoria and Nanaimo as well as other points on the Island.

Most of the witnesses called on behalf of the applicant represented firms concerned with the movement of food products, among them White Spot Ltd., Todds Reddi Hot Foods Ltd., National Cheese Co. Western Ltd., Neptune Food Suppliers and B.C. Packers Ltd. They generally testified regarding their transportation needs relative to Vancouver Island points. In addition, witnesses representing the manufacturers of Pittsburg Paints, as well as United Automotive Distributors, elaborated on their particular problems in getting product to their customers on time and in good condition.

Mrs. K. Muldoon, part owner with her husband of Muldoon Greenhouses Ltd., Port Coquitlam, explained the difficulties she had in getting tropical plants and trees, which require very careful handling, to

various locations on Vancouver Island, noting that because of economics a large order was required if their own vehicle was to transport same. She went on to describe the sad state of a shipment of plants she had dispatched to Victoria by one of the objectors present at the hearing. She had complained about the shipment, which was badly damaged due to mishandling, but had not received a response to her call. She strongly supported the applicant which provides her with excellent service to areas other than Vancouver Island.

Mr. Vleeming, the general manager and corporate witness for the applicant company, generally reviewed the history and growth of the firm he represents, as well as other information contained in a comprehensive book of exhibits, which included information with respect to their licence authority, equipment operated, terminals at various locations in the province and a summary of the contribution made by the company to the economic well-being of the province through expenditures for equipment, wages, insurance, taxes, repairs and maintenance.

In addition, he explained the plan the firm had to provide an over-night, next day service to various locations on Vancouver Island, which would include Saturday deliveries. He also reviewed with Counsel the support material, which included 95 letters filed with the application, 77 filed subsequently, most of them from Vancouver Island, and six notarized letters submitted by supporters who could not attend the hearing.

The objectors to the application presented two witnesses, filed a number of exhibits, cross-examined the witnesses called by the applicant, and also presented closing argument. Mr. P. Feijao gave evidence on behalf of Valley Reefer Services Ltd. and Mr. B. Smith for CP Express and Transport Ltd. Mr. Marshall restricted his participation to asking questions of witnesses and presenting final argument. No witnesses from Van-Kam Freightways Ltd. were called to testify.

In his evidence, Mr. Smith, on behalf of CP Express and Transport Ltd., indicated that his firm was not objecting to the transportation of temperature controlled freight by the applicant, but to the 15% dry goods. He noted that there was a lack of freight coming back from Vancouver Island and a good percentage of equipment from there comes back empty. The granting of the application would merely compound the difficulties being experienced by existing carriers, particularly Class I scheduled carriers, such as his firm, who see their volumes of freight eroded by Class III (non-scheduled) carriers.

Mr. Feijao, the president and majority shareholder of Valley Reefer Services Ltd., testified regarding his entry into trucking, first as a driver, then as a lease operator, and finally as a licensed carrier. He spoke with considerable pride about the two facilities he operates, one in Langley, the other in Victoria, both with cooler and freezer room storage; the excellent vehicles which provide the service, and the care taken to ensure that all product is carefully and hygienically transported at the proper temperatures. He claimed to have had a commendation from the federal inspection authorities of his plant operations.

He pointed out as well that he too offers a Saturday delivery on the Island and that 75% of his revenue is derived from traffic destined to that point, most of it for the Victoria area. He stressed the importance to his firm of that revenue, and indicated that the loss of some of the business would result in problems for his firm which might force him to cut back on staff and service.

In his final argument Mr. Marshall noted that Sidney Freight Ltd. does not object to the temperature controlled service portion of the application, but is of the view that the wording contained in existing Clause No. 12 is tantamount to general freight and the applicant ought to be straightforward and file an application in that precise wording. No public need had been demonstrated, he argued, and if granted the vagaries of the wording in Clause No. 12 would result in confusion and misunderstanding.

Both Mr. Smith and Mr. Macdonald in their final summaries expressed a concern for Class I scheduled service carriers, who are obliged to provide a service day in and day out, even if no freight is tendered to them. In addition, they argued that Class I carriers are required to provide service to all intermediate points, which would unlikely be served by the applicant if the application were granted. Both Mr. Smith and Mr. Macdonald also argued that no public need had been demonstrated regarding the need for additional service to Vancouver Island at this time.

Mr. Macdonald also addressed the difficulties faced by Valley Reefer Service Ltd., noting that Mr. Feijao, its president, had testified that he could lose 25% of his Vancouver Island business if the application were granted. This could be fatal to the operation.

Mr. Macdonald noted as well that none of the support material filed with the application mentioned any volumes of freight to be tendered. In closing he asked the Commission to examine all of the evidence before it very carefully and call on its knowledge of Vancouver Island before rendering a decision.

Mr. Robbins, in his summation, reviewed the purpose and reason for the application, which in his view was fully supported. The quality of the service provided by the applicant had been unquestioned during this hearing and the support, both from the witnesses and the material filed, had proven the need for the additional service applied for.

He noted that CP Express and Transport Ltd. has very extensive general freight authority, presently being exercised by its three internal divisions, but even at that it picks it own areas of service and its own class or type of freight to be transported. He noted that very little temperature controlled freight is transported by that carrier.

Mr. Robbins pointed out as well that the scheduled Class I service offered by Van-Kam Freightways Ltd. is limited to certain areas and no such service is provided by that carrier on Vancouver Island. Sidney Freight Ltd. has some Class I authority on Vancouver Island, but generally limited to Nanaimo and points south. No temperature controlled service is offered on the Island.

Counsel for the applicant then reviewed the evidence of the witnesses he had called, noting that a number of them provide service to the Island in their own vehicles, but would like to have a regular carrier service. He stressed the strong support indicated by the approximately 180 letters of support filed and the 12 shipper witnesses.

In closing he stressed the need for service on Vancouver Island of the same high quality offered by the applicant on the Mainland, and expressed the view that such service would provide great benefits to the residents and businesses located on the Island. He asked that the application be granted as applied for.

The Commission, after reviewing all of the material before it, including information gleaned at the hearing, makes the following Findings of Fact:

1. The applicant is a competent and well-established British Columbia motor carrier;
2. A substantial number of letters in support of the application were tendered;
3. Many of the letters were general in nature and indicated a desire to have an alternate carrier, many appeared to be interested primarily in Saturday delivery, and some wished to consolidate their motor carrier service;
4. There was little indication in the letters of support as to volumes of freight, present need or unsatisfactory service;
5. The case for the applicant and the evidence of the shipper witnesses dealt with the carrier's professionalism in providing a protective service with emphasis on the freezer and cooler areas of such a service;
6. A number of supporters were looking to the applicant for an overload service when it was inconvenient to use their private vehicles;
7. Although the applicant's Counsel through examination and in summary raised the suggestion that people employing private vehicles might dispense with those vehicles if the application were granted, there was no compelling or even strong indication that this could result;
8. There are specialized carriers operating modest fleets providing protective service to Vancouver Island and in addition, numerous food shippers have apparently found that on Vancouver Island and the Lower Mainland it suits their needs to maintain vehicles of their own for delivery purposes;
9. There was no convincing argument that refrigerated or cooler service to Vancouver Island was poor or totally inadequate;
10. The Vancouver Island market is difficult in that there is a high degree of imbalance of traffic to and from the Island;
11. The imbalance of traffic is a particular problem for the scheduled carriers who offer a service to and from the Mainland and on Vancouver Island into small communities;
12. Recently additional service to Vancouver Island has been approved for a number of carriers with the result that the addition of a major carrier hauling substantial quantities of non-refrigerated products does not appear to be warranted.

The Commission, having considered the very broad nature of the application which would embrace the transport of a great many products, including food which would not require refrigerated service or in many cases a cooler service, the apparent adequacy of refrigerated and cooler service now being provided and the particular nature of the Vancouver Island market, has concluded that it would not be in the public interest to grant the application.

Accordingly, the Motor Carrier Commission orders that the application of Clark Reefer Lines Ltd., published as No. 1827/89, be and it is hereby refused.

It is further ordered that the applicant and the objectors named herein be and they are each assessed costs in the amount of the security deposits filed by them beforehand, except for Island Reefer Services Ltd. and Glacier Transport Ltd., whose security deposits are to be refunded to them.

Approved by:

GERARD M. MORRIS
Chairman

IAN W. CRAIG
Commissioner

WILLIAM H. PRESTON
Commissioner

By the Motor Carrier Commission:

JOHN KOSOWICK
Secretary to the Commission

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

1-90

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of a Review by the Motor Carrier Commission of its Decision Concerning the Application of F and G Delivery Ltd., Published as No. 1471/89.

Before: GERARD M. MORRIS, *Chairman* and WILLIAM H. PRESTON, *Commissioner.*

Dated the 15th Day of January, 1990.

ORDER

Whereas F & G Delivery Ltd. (the applicant) applied to alter their Class III Public Freight-vehicle licences and were granted the following authority:

Commodities to be carried:	*For Whom to Be Carried:*	*Area, Route or Territory:*
Wooden trusses, wooden beams, sections of building structures, poles, lamp standards, fabricated steel, and items used in building structures at jobsites. All types of commercial and industrial machinery, motor vehicles, engines, pumps, generators and accessorial material directly related to the load being transported. (Charter trips).	One individual or company only at any one time.	From points in Licence District Nos. 14, 14A and 15 delivered to points in British Columbia: or vice versa.

Restrictions:

(a) The transportation of motor vehicles is restricted to one vehicle at any one time.

(b) The transportation of these commodities is restricted to the use of a vehicle equipped with a crane (mounted on that vehicle) which is used to load and unload the goods being transported.

and

Whereas by letter dated September 26, 1989, the applicant requested a review of the area that may be served; and

Whereas the Commission arranged for a review to be held on December 14, 1990, and caused that information to be published in the regular Summary of Applications and Decisions; and

Whereas at the review hearing the applicant was represented by Mr. Lloyd Ford, director of the company, but no objectors were present; and

Whereas Mr. Ford presented a brief to the Commission, containing photographs and details of the carrier's equipment and additional support letters; and

Whereas Mr. Ford described to the Commission several instances where his company was asked to perform a point to point service in British Columbia, the authority he had applied for in his application, but which service their current Conditions of Licence did not permit; and

Whereas after considering the additional information presented at the review hearing, the Commission decided that their previous decision should be amended:

The Motor Carrier Commission orders that its previous decision of August 21, 1989, respecting the application of F & G Delivery Ltd., published as No. 1471/89, be and it is hereby amended by changing the area to be served to:

From point to point within the Province of British Columbia.

In all other respects the previous decision of the Commission in this case remains the same.

Approved by:
GERARD M. MORRIS
Chairman
WILLIAM H. PRESTON
Commissioner

By the Motor Carrier Commission:
VALERIE ISAAC
Acting Secretary

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

5-90

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of Application No. 1944/89 of Dan Foss Industries Ltd.

Before: GERARD M. MORRIS, *Chairman* and IAN W. CRAIG, *Commissioner*.

Dated the 22nd Day of January, 1990.

ORDER

The application of Dan Foss Industries Ltd. (the applicant), published as No. 1944/89, came before the Motor Carrier Commission on January 15, 1990 for hearing.

The applicant was represented by its assistant manager, Ms. Hanna Mortenson. Qualified objectors, Sidney Freight Ltd., All-Can Express Ltd., and CP Express & Transport Ltd. were represented by company officials, respectively, Messrs. B. Marshall, H. Lund, and B. Smith. Qualified objector Van-Kam Freightways Ltd. was represented by Counsel, Mr. R. W. Macdonald.

Ms. Mortenson first made an opening statement generally outlining the origins and growth of the applicant company, which was founded in 1967 by her father, and now employs a total of 65 people, operates office and terminal facilities both in Burnaby and Victoria and dispatches a fleet of 47 vehicles, all of which are company owned. She expressed the view that the record of service by the company speaks for itself, indicated that revenues have continued strongly, and noted that damage claims have been kept to a minimum, there being only five in a total of 22 years in business.

She then advised the Commission that the reason for the application was to enable her firm to provide a direct, unrestricted, LTL general freight service to all points on Vancouver Island, or vice versa, and also between points on Vancouver Island. Ms. Mortenson also claimed the applicant could not depend on interline service on the Island as presently used because such arrangements had proven unsatisfactory for various reasons which she then cited. It was indicated as well by Ms. Mortenson that a distribution centre would probably be set up in Nanaimo if the application were granted. She closed her opening statement by pointing out that both the population of the Island and industry on the Island is growing at the present time.

No witnesses were called to testify on behalf of the applicant, but following the opening statement Ms. Mortenson, Mr. F. Mortenson, its president, and Mr. A. Hasham, an officer of the Vancouver Island operating company Dan Foss Courier (Island) Ltd., were sworn and answered questions put to them by representatives of the objectors.

The three corporate witnesses were questioned extensively regarding the firm's manner of operation, its plans for expansion should the application be granted, how the support letters were solicited, what studies had been undertaken with respect to the actual needs of the shippers who supported the application, the rates charged, and the economic feasibility of the proposed operation, in particular with respect to providing a service to remote points on Vancouver Island such as Holberg and Ucluelet.

Mr. Macdonald, in his cross-examination, drew from the applicant's witnesses admissions that they are providing a satisfactory service to the Okanagan, the Kootenays and Northern B.C. through an interline arrangement, and admissions as well that although the company's stated policy is to refuse shipments of dangerous good, in one instance at least such goods were accepted and shipped resulting in charges being laid and a guilty plea entered. Subsequently, a five thousand dollar fine was levied. In addition Mr. Macdonald probed into the relationship and arrangements between the applicant and the Vancouver Island operating company.

The objectors argued in closing that no actual proof of public need had been put forward, the letters of support being completely lacking in information with respect to volumes of freight or frequency of service required, and that there would be no benefit to the public in the granting of the application. In addition, the question of the fitness of the applicant was also raised.

Ms. Mortenson, in final summation for the applicant, argued that she could have provided more evidence of difficulty in interlining on Vancouver Island, but did not wish to knock the other carriers.

She also noted that the applicant was well established, had been in business for 20 years, was a responsible carrier, and a good corporate citizen which had always abided by the motor carrier rules. She asked that the application be granted.

The Commission, after carefully considering all of the information available to it including that presented at the hearing, makes the following Findings of Fact:

1. The Applicant is a responsible carrier, which has established a thriving transportation business in the Province of B.C.;
2. The applicant seeks authority through this application to provide an unrestricted, LTL, non-scheduled, general freight service from the mainland to all points on Vancouver Island, or vice versa, and also between all points on Vancouver Island;
3. The lane of traffic sought to be served by the applicant is most competitive at the present time and appears to be adequately served by numerous scheduled and non-scheduled carriers, both less than truckload and truckload;
4. No shipper witnesses were called by the applicant to testify as to their own specific shipping requirements;
5. The form letters of support presented by the applicant failed to disclose any evidence of lack of service, poor service, or need for additional service;
6. The evidence submitted indicates that the application is based solely on the applicant's natural desire to expand and not in response to shippers needs or demands.

Based on its findings, the Commission has concluded that the granting of the application is not justified.

Accordingly the Motor Carrier Commission orders that the application of Dan Foss Industies Ltd., published as No. 1944/89, be and it is hereby refused in its entirety.

It is further ordered that the applicant and the qualified objectors be and they are hereby each assessed costs in the amount of the security deposits filed by them beforehand.

Approved by:

GERARD M. MORRIS
Chairman

IAN W. CRAIG
Commissioner

By the Motor Carrier Commission:

JOHN KOSOWICK
Secretary to the Commission

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

7-90

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of a Review by the Motor Carrier Commission of its Decision Concerning the Application of Garry Allan Smith, Published as No. 1454/89.

Before: GERARD M. MORRIS, *Chairman* and WILLIAM H. PRESTON, *Commissioner.*

Dated the 29th Day of January, 1990.

ORDER

The application of Garry Allan Smith (the applicant), published as No. 1454/89, which was previously refused, came before the Motor Carrier Commission on January 11, 1990, for review.

The applicant was represented by Counsel, Mr. Paul Joyce. The eight objectors: Walter Bros. Cariboo Transport Ltd.; Double H. Carriers Ltd; Carl Dormuth; Rauch Holdings Ltd.; Caribou Road Services Ltd.; Northland Mobile Home Towing Ltd.; J.F.J. Enterprises Ltd.; and D.L. Lee Ltd., were represented by Mr. K. A. Martin, Tariff and Transport Advisor.

The application being reviewed was for charter trip authority to haul industrial equipment and accessorial parts, mining and camp supplies from points within a radius of 100 road miles of the main Canada Post Office at Likely, B.C. delivered to any point within the Province of British Columbia, or vice versa.

In addition, the applicant was requesting that the restriction on tacking placed on his authority in Order No. 83 - 89 dated November 23, 1989, be withdrawn.

At the commencement of the hearing, the Chairman noted the reference to tacking in Mr. Joyce's letter dated November 29, 1989, and indicated that he would refer to that matter during the course of the proceedings.

Counsel for the applicant introduced two additional letters of support and addressed the two main reasons he saw for refusal of the application: lack of public need and fitness of the carrier.

Mr. Joyce informed the Commission that one of the objectors, Double H. Carriers Ltd., had applied for five additional licences, and suggested that these would not have been applied for if there was no public need in the Williams Lake area. He stated that research confirmed that the economy in Williams Lake is booming just now and Ms. Valerie Suski, the applicant's wife, then made a statement in which she referred to several media reports concerning a proposed fibreboard plant, coal production facility and a new Westmac mill, each of which, if proceeded with, could increase employment and provide work for truckers. Ms. Suski told the Commission that it was difficult to obtain drivers and mechanics because everyone is working.

On the question of fitness, Mr. Joyce stated that some of the allegations at the original hearing of illegal hauling by Mr. Smith were incorrect, and Mr. Smith was given the opportunity to point out the discrepancies, and in turn to cite instances of alleged illegal hauls by some of the objectors.

Speaking for the objectors, Mr. Martin advised the Commission that one of the additional letters of support endorsed service that Mr. Smith can already provide, and the other gave no details of volumes, frequency, etc.

Mr. K. Grieve of Double H. Carriers Ltd. explained that the application for five additional licences referred to by Mr. Joyce had been refused and a new application had been filed for cross-authority privileges between the two companies he owns. In addition he stated there was no shortage of lowbed service and, except in the wintertime, no shortage of qualified drivers.

Regarding the allegations by Mr. Smith of illegal hauling, these were explained by Mr. Grieve and Mr. J. Coombes, the new owner of Rauch Holdings Ltd.

Evidence was given by Mr. Coombes that 38% of his business in the month of November, and 30% in December, 1989, was to service the Likely area. It was also established that the applicant did not maintain equipment in Likely although that was the base of his operations contemplated by his licence authority.

Before summation commenced, the Chairman explained that originally the licence purchased by Mr. Smith had been issued because it served the Likely area and customers within that area. The purchaser, by virtue of tacking, had sought to convert it from a Likely, B.C., to a Williams Lake, B.C., licence, and the prohibition of tacking in the Commission's Order No. 83 - 89 was to ensure that the licence authority was that originally granted by the Commission, not one unofficially expanded by the device of tacking.

In summation, Mr. Martin said the Commission had made a good Order based on the evidence presented to it. He stated there was no need for an additional lowbed operator in the area, and Mr. Smith had admitted in his own statements that he was still operating by tacking despite the restriction placed on his Conditions in Order No. 83 - 89. The objectors believe the Commission made a proper decision and he asked the Commission to confirm its original Order.

Mr. Joyce, in his summing up, said that naturally the objectors want to protect their investment in their companies, but a motor carrier licence is not monopolistic as a timber cutting licence can be, and the Commission has decided in certain circumstances that competition is good. He stated that public need had been established now and at the previous hearing. Mr. Smith has been a resident of Williams Lake for 20 years and earned the respect and the faith of the shipping public in that area, and obviously has the confidence of the lending institutions because he has a lot of equipment. He submitted the application should be granted as applied for.

After considering all of the information presented at the review hearing, the Commission has concluded that a case was not made to persuade it to change its original decision.

Accordingly, the Motor Carrier Commission orders that its previous decision refusing Application No. 1454/89 be and it is hereby confirmed.

It is further ordered that the restriction on tacking placed on the applicant's Conditions of Licence by Order No. 83 - 89 be and it is hereby confirmed.

Approved by:

GERARD M. MORRIS
Chairman

WILLIAM H. PRESTON
Commissioner

By the Motor Carrier Commission:

VALERIE ISAAC
Acting Secretary

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

11-90

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of Application No. 2036/89 of Reginald Buxton.

Before: GERARD M. MORRIS, *Chairman*, IAN W. CRAIG, *Commissioner* and WILLIAM H. PRESTON, *Commissioner*.

Dated the 14th Day of February, 1989.

ORDER

The application of Reginald Buxton (the applicant), published as No. 2036/89, for transfer to him of all of the motor carrier licence authority issued to and in the name of Utility Public Freightways Ltd. (Utility) came before the Motor Carrier Commission on February 5, 1990 for public hearing.

The applicant represented himself. The three qualified objectors: Wade Enterprises Ltd., Van-Kam Freightways Ltd., and Jetruk Distribution Co. Ltd. were represented, respectively, by Mr. W. McKenzie, Counsel Mr. R. W. Macdonald, and Mr. W. Staples.

It should be noted for the record that the Commission had scheduled a hearing for August 16, 1989, at which Utility was to be given the opportunity to Show Cause why all of the licenses issued to and in their name should not be cancelled. The hearing was postponed generally at the request of Mr. R. Fischer representing Thorne, Ernst and Whinney Inc., the receiver for Utility, as there was a purchaser available. Mr. Fischer suggested that there would be a miscarriage of justice and a lack of procedural fairness if the Show Cause Hearing was proceeded with and the application for transfer not dealt with. After a short adjournment, the Commission agreed to his request and accordingly adjourned the Show Cause Hearing generally.

Mr. Buxton, in presenting his case, first read into the record a written statement, being Exhibit No. 4 at these proceedings, in which he indicated that he wished to operate along Routes 3 and 3A only and delete the authority Utility held to provide service to points in Merritt, Kamloops and the Okanagan. In the same statement he advised that he proposed to have terminals or agents only in Vancouver, Castlegar and Cranbrook with stops at other points in transit and on demand. He indicated as well that he was interested only in the licence authority of the transferor company and not in the existing name or equipment. No letters of support were filed by the applicant and no shipper witnesses were called by him.

During cross-examination Mr. Buxton stated that he had completed a survey of his customers who indicated generally that they were satisfied with the existing service to Okanagan points, but complained that more service to the Kootenays was required. He responded to additional questions from Mr. Macdonald regarding the timing of his agreement to purchase the licence authority in relation to both the "soft receivership" and the final bankruptcy of Utility.

A number of questions were posed by the other two objectors generally concerning the indebtness of Utility for transportation related services provided by them.

In his final summation the applicant argued that it would be in the public interest to grant the application and the three objectors predictably asked that the application, which in their view was not supported, be refused.

The Motor Carrier Commission, after carefully considering all of the evidence, testimony and exhibits before it, including that presented at the public hearing, makes the following Findings of Fact:

1. No documentary evidence was submitted to support the applicant's contention that additional service was needed in the Kootenay area;
2. No evidence was submitted that the granting of the application would benefit the shipping public in any way;
3. The authority sought to be transferred from Utility to the applicant had not been exercised for some months.

Based on these facts the Commission has concluded that the application under consideration ought to be refused.

Accordingly, it is ordered that the application of Reginald Buxton, published as No. 2036/89, be and it is hereby refused.

It is further ordered that the applicant and the three objectors present each be assessed costs in the amount of the security deposits filed by them beforehand.

Approved by:
GERARD M. MORRIS
Chairman
IAN W. CRAIG
Commissioner
WILLIAM H. PRESTON
Commissioner

By the Motor Carrier Commission:
JOHN KOSOWICK
Secretary to the Commission